Teddi of California *and* United Industrial Workers, Local 24. Case 21–CA–34636

April 28, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND ACOSTA

On February 8, 2002, Administrative Law Judge Gregory Z. Meyerson issued the attached decision. The General Counsel filed limited cross-exceptions and a supporting brief, the Respondent filed an answering brief, and the General Counsel filed a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding[1] to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions as modified below and to adopt the recommended Order as modified and set forth in full below.

The judge, in the body of his decision, explicitly found that Respondent violated the Act by telling employees who were engaged in union activities to look for jobs elsewhere if they were dissatisfied with their current jobs, but did not include this finding in the conclusions of law section of his opinion. The General Counsel, in limited cross-exceptions, points out this omission. The Respondent, in its answering brief, belatedly contests the substance of this finding. In the absence of a timely exception to this finding, we shall modify the judge's recommended Order to include this violation.[2]

The General Counsel, noting that most of the Respondent's employees speak Spanish and that the General Counsel's witnesses testified through an interpreter, also cross-excepts to the judge's failure to order the notice posted in Spanish. As this exception is not opposed by the Respondent, it is granted.[3]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Teddi of California, Rancho Dominguez, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their own or others' union activities, membership, or sympathies.

(b) Impliedly promising employees unspecified benefits so as to discourage their support for the Union.

(c) Creating the impression among its employees that their union activities are under surveillance.

(d) Threatening its employees with discharge, deportation, or with other adverse action in order to discourage employees from supporting the Union.

(e) Telling employees who engaged in union activities that if they are dissatisfied with their jobs, they should look for employment elsewhere.

(f) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its facility in Rancho Dominguez, California, copies of the attached notice marked "Appendix"[4] in English and Spanish. Copies of the notice, on forms provided by the Regional Director for Region 21 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notices to all current employees and former employees em-

[1] On January 17, 2003, the Board severed and remanded to the Regional Director Case 21–CA–34494, involving an alleged violation of Sec. 8(a)(3) of the Act by the Respondent. Accordingly, there remains before us only the Respondent's alleged violations of Sec. 8(a)(1). The judge found that the Respondent unlawfully interrogated employees concerning their own or others' union activities, membership, or sympathies; impliedly promised employees unspecified benefits to discourage their support for the Union; created the impression among its employees that their union activities were under surveillance; threatened employees with discharge, deportation, or other adverse action to discourage them from supporting the Union; and, told employees that if they were dissatisfied with their jobs they should look for work elsewhere. There are no exceptions to these findings.

[2] Chairman Battista concurs in the result. The judge did not reach a conclusion of law with respect to this matter. Thus, it is not surprising that the Respondent did not except to the factual findings which could have supported such a conclusion. On the other hand, the General Counsel did except to the judge's failure to reach a conclusion of law. The Respondent has filed an answer thereto. In these circumstances, Chairman Battista would reach the merits, rather than decide the issue on procedural grounds. He finds that the statement was made, and that it was unlawful.

[3] We correct the record to indicate that the Respondent's facility is located in Rancho Dominguez, California.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ployed by the Respondent at any time since April 9, 2001.

(b) Within 21 days after service by the Region, file with Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT interrogate you concerning your own or others' union activities

WE WILL NOT impliedly promise you unspecified benefits in an attempt to discourage you from supporting the Union.

WE WILL NOT create among you the impression that your union activities are under surveillance.

WE WILL NOT threaten you with discharge, deportation, or with other adverse action in order to discourage you from supporting the Union.

WE WILL NOT tell those of you who are engaged in union activities that if you are dissatisfied with your jobs you should look for employment elsewhere.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

TEDDI OF CALIFORNIA

Lisa E. McNeill, Esq., for the General Counsel.
Jeffrey A. Berman, of Los Angeles, California, and *Gary A. Freedman*, of Santa Monica, California, for the Respondent.

DECISION

STATEMENT OF THE CASE

GREGORY Z. MEYERSON, Administrative Law Judge. Pursuant to notice, I heard this case in Los Angeles, California, on December 3 and 4, 2001.[1] Ana M. Portuguez, an individual (Portuguez), filed an original unfair labor practice charge in Case 21–CA–34494 on April 17, and United Industrial Workers, Local 24 (the Union) filed an original and an amended unfair labor practice charge in Case 21–CA–34636 on June 28 and September 6, respectively. Based upon those charges, the Regional Director for Region 21 of the National Labor Relations Board (the Board) issued a consolidated complaint on September 17. The complaint alleged that Teddi of California (the Respondent or the Employer) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). The Respondent filed a timely answer to the complaint denying the commission of the alleged unfair labor practices.

All parties appeared at the hearing, and I provided them with the full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to argue orally and file briefs. Based upon the record, my consideration of the briefs filed by counsel for the General Counsel and counsel for the Respondent, and my observation of the demeanor of the witnesses,[2] I now make the following

FINDINGS OF FACT

I. JURISDICTION

The complaint alleged, the answer admitted, and I find that the Respondent is a California corporation, with an office and place of business in Rancho Domingo, California, where at all times material herein it has been engaged in the business of distributing apparel. Further, I find that during the 12-month period ending September 7, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $ 500,000; and that during that same period, the Respondent purchased and received at its Rancho Domingo, California facility goods valued in excess of $5000 directly from points located outside the State of California.

Accordingly, I conclude that the Respondent is now, and at all times material herein has been, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Respondent's answer denied the complaint allegation that the Union is a labor organization within the meaning of the Act. Counsel for the General Counsel called upon the Union's organizer, Ruben Velazquez, who testified that the Union was able to improve the working conditions and wages of the employees of several employers with whom the Union had collective-bargaining agreements, and was in the process of attempting to negotiate a contract for the employees of another employer. Further, employees Santiago Coronel and Ana Portuguez testified as to their activities on behalf of the Union in

[1] All dates are in 2001 unless otherwise indicated.

[2] The credibility resolutions made in this decision are based on a review of the testimonial record and exhibits with consideration given for reasonable probability and the demeanor of the witnesses. See *NLRB v. Walton Mfg. Co.*, 369 U.S. 404, 408 (1962). Where witnesses have testified in contradiction to the findings herein, I have discredited their testimony, as either being in conflict with credited documentary or testimonial evidence, or because it was inherently incredible and unworthy of belief.

distributing authorization cards to other employees. The evidence established that the Union is an organization in which employees participate, and that exists for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. Therefore, I find that at all times material herein, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. The Dispute

The complaint alleged that on several dates during the months of March and April, various supervisors and agents of the Respondent interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights by means of: threat of discharge, impression of surveillance, threat of deportation, promise of benefit, and interrogation. Additionally, the complaint alleged that on April 12, the Respondent laid off its employee Ana Portuguez because of her activities on behalf of the Union.

The Respondent's answer denied the commission of any unfair labor practice, and it affirmatively alleged that any statements made by supervisors or agents of the Respondent regarding the Union were made in the exercise of free speech under Section 8(c) of the Act and the United States Constitution. Also, the Respondent alleged that Portuguez' layoff was unrelated to her protected activity.

B. The Facts

The Respondent is engaged in the business of designing, manufacturing, marketing, and selling women's clothing. Finished product is distributed from its Rancho Domingo, California facility to retail customers located around the country. At the time of the hearing, there were approximately 200 to 225 employees at the facility. In March and April, during the events in question, there were approximately 275 employees. The Union began an organizing campaign at the Employer's facility in approximately February.

Santiago Coronel, an employee in the Employer's production department, has been employed by Teddi since 1987. He received union authorization cards from Ruben Velazquez in approximately February, which he and four other employees began to distribute to fellow employees. One of the employees who assisted Coronel in distributing authorization cards was Ana Portuguez. She worked for the Respondent in the traffic department from February 18, 1998, until her layoff on April 12, 2001. Portuguez had previously been laid off for 1 week in September 1998. The Respondent's facility has seven departments, including: sales, design, merchandising, financial, data processing, production, and traffic. The traffic department is also referred to as the shipping or distribution department. The only employees involved in the complaint allegations are employed in the traffic and production departments. In April, during the events in question, there were approximately 125 to 140 employees employed in the traffic department, and approximately 70 employees in the production department. The Respondent's chief executive officer is Stuart Weiser and the chief financial officer is Dennis Dunn. The Respondent's witnesses acknowledged that the traffic department is supervised by Larry Wilson and his assistant, Teresa Rosales, and the production department is supervised by Rodelinda (Gloria) Gomez. There is no dispute regarding the supervisory status of Weiser, Dunn, Wilson, Rosales, and Gomez.

Santiago Coronel testified that on April 9, he was present at a meeting called by Gloria Gomez and attended by approximately 17 or 18 employees. Gomez conducted the meeting in Spanish, which is the primary language for the great majority of the Respondent's employees. According to Coronel, Gomez told the employees that she knew that employees had "signed cards." She admitted not knowing who had been passing out the cards, but indicated that this person was lying to the employees in order to get their money. Allegedly she told them to not be "fools" and not be "brainwashed," and to think for themselves. Coronel testified that she said, "I could fire you all at this time, but I do not want to terminate you. If you are not content, if you are not comfortable with this job, I've already told you many times, that there's the door quite open for you to go and look for another job of [sic] you don't like it here." Allegedly the meeting lasted 15 or 20 minutes.

Gloria Gomez has worked for Teddi for about 12 years. She is currently the vice president for production, a position that she has held for 5 years. Gomez testified that she had no meeting with employees on April 9, but on April 16 she held a meeting for a group of about 15 employees she supervised, including Coronel. Gomez had been called early that morning by her boss, Stuart Weiser, and told that there were "some rumors of union organization or whatever going on in the warehouse." Weiser asked her to "go find out what their needs were, how come they were not happy, and what we could do to help them." That led to her calling the meeting, actually one of two that day. Gomez denied bringing up the subject of the Union, and claimed it was the employees who raised the subject, as they pointed fingers at each other, accusing fellow employees of being union organizers. She testified that the only matter which she brought up was that if employees "need help" or were "not happy with the Company," they should come to see her and find out if there was something she could do to help. According to her testimony, the meeting lasted only 5 or 10 minutes. At first, under direct examination, Gomez testified that at the time of her meeting with employees on April 16, she did not know that any of the employees she supervised, including Coronel, were involved in union organizing activities. However, on cross-examination Gomez was forced to acknowledge that on April 11, she first learned from two employees that Coronel was distributing union authorization cards.

According to Santiago Coronel, the day following the group meeting, which he believes was April 10, he was called into Gloria Gomez' office. He testified that they were alone in the office when Gomez told him that she had asked several employees who had been distributing union cards, and had been informed that Coronel was the "leader" of the campaign. Gomez then asked him if he knew that he was harming his family. She mentioned his two children who worked for Teddi, and specifically his son, Higinio, because he was a manager.[3] Go-

[3] The complaint alleged Higinio Coronel as an agent of the Respondent. However, I conclude that there was insufficient evidence pre-

mez told Coronel that it had been hard for her to keep from the boss that two of his children worked for the Company. She said that management knew that Coronel and his family did not have "documents." She told him that the Employer could "fire everybody, your whole family." In addition to his two children, Gomez mentioned that Coronel was jeopardizing his brother, who also worked for Teddi. Coronel testified that when Gomez used the term "documents," he understood her to mean, "not having legal papers, to be undocumented."

Gloria Gomez denied that any such conversation ever took place. She testified that at no time had she ever had a conversation with Coronel alone where the Union was ever discussed. Specifically, she denied ever interrogating Coronel about his union activity, ever threatening him or his family with discharge, ever indicating to him that he was under surveillance, or ever threatening him or his family with deportation. Further, she testified that following the group meeting which she indicated was held on April 16, Stuart Weiser instructed her not to have any more meetings with employees about the Union, as "consultants" would be coming to the facility to represent the Employer's interest. She claimed to have followed those instructions. In any event, as was noted above, although she initially denied that on April 16 she had any knowledge of Coronel's union activity, Gomez ultimately admitted that she learned as early as April 11 that he had been distributing union cards.

Ana Portuguez testified that in March, Santiago Coronel asked her to help him distribute union cards. Subsequently, she spoke to fellow employees about the Union, and passed out six authorization cards. According to Portuguez, one of the people at Teddi who worked in the traffic department and who occasionally assigned her work to perform was Maritza Ochoa. Portuguez testified that 1 day in March, after she began to distribute union cards, she was approached by Ochoa who brought up the subject of the Union. At the time, Portuguez was working in the company of eight or ten other employees. Ochoa said, "Somebody among you is distributing cards from the Union." Allegedly, Ochoa warned the employees not to do so, and to "protect" their jobs. She further warned them that they would be fired for continuing to distribute cards.

However, on cross-examination, Portuguez was forced to admit that the affidavit which she gave to an agent of the Board during the investigation of the unfair labor practice charges in these matters did not make mention of the alleged incident with Ochoa in March. Portuguez insisted that she gave the information to the Board agent, despite the fact that no mention of it was contained in the affidavit.

The Respondent has employed Maritza Ochoa for 5 years. She has held the position of lead person in the traffic department for the past 3 years. The complaint alleged that Ochoa was an agent of the Respondent. However, the Respondent's answer denied that allegation. In her testimony, Ochoa denied ever having a conversation with Portuguez regarding unions or union authorization cards.

sented at the hearing to establish that he was anything other than an ordinary employee.

According to Portuguez, the next time that Ochoa talked to her about the Union was on April 12. She was at her sewing machine when Ochoa approached and asked her if she knew who was passing out cards. While her testimony was somewhat confusing, it appears that Portuguez is claiming that she and Ochoa had a conversation about why Ochoa did not want the Union to organize Teddi. Further, Ochoa was alleged to have said that the Employer was going to "investigate" to determine who was passing out union cards. After further questions were asked of Portuguez, she apparently told Ochoa that she had passed out cards, and that a male coworker had given her the cards. As was noted above, Ochoa denied ever having a conversation with Portuguez regarding unions or union authorization cards.

Portuguez testified that later on April 12, Ochoa approached Isabel Sotelo's sewing machine, which was located next to hers. Sotelo was a fellow employee who was not at her machine at the time. According to Portuguez, Ochoa said that she was looking for something, opened the door of the machine and removed what Portuguez recognized to be a union card. Ochoa then took the card to the Respondent's office. Portuguez had given this card to Sotelo some time prior to that day.

While Ochoa admitted obtaining a union authorization card on April 12, her version of the events was significantly different from that of Portuguez. She testified that employee Saide Vazquez approached her and asked, "Is it true we have to sign some cards or we get fired by the Company?" According to Ochoa, she had no idea what kind of cards Vazquez was referring to, and so she reported the matter to her boss, Larry Wilson, who at the time was with Dennis Dunn. Allegedly, Wilson was unaware of what kind of card Vazquez was referring to, and he directed Ochoa to go back to Vazquez and find out. Ochoa testified that she went back and asked Vazquez what kind of card she was talking about, at which point Vazquez gave her the card. Ochoa took the card and brought it to both Wilson and Dunn. She claimed that she neither read the card nor recognized it as a union card. Ochoa denied ever getting a union card from Isabel Sotelo's work area. Both Wilson and Dunn essentially supported Ochoa's testimony.

The Respondent laid off Ana Portuguez on April 12. She was one of 15 employees who were laid off on that date from the traffic department. However, of the laid-off employees, Portuguez was the only full-time employee, while all the others were temporary employees. According to Dennis Dunn, a full-time employee works for the Employer full time and receives all the company benefits, including vacation pay, holiday pay, and medical insurance. A temporary employee is hired for an indefinite length of time and receives no benefits. Dunn testified that for layoff purposes, seniority is not a consideration, nor is whether an employee is full time or temporary. Allegedly, the only considerations are the staffing needs of the Company and the individual employee's job performance. Dunn acknowledged that layoff selections are based simply on a "subjective evaluation" of needs and performance. He mentioned a layoff in the traffic department in December of 2000, where both temporary and full-time employees were laid off. As for the April 12 layoff, Dunn testified that the decision regarding the number of employees to be laid off and who they

should be was made by Larry Wilson, in consultation with Teresa Rosales. According to Dunn, he and Wilson discussed Wilson's intention to lay off employees in his department about 1 week prior to the actual layoff. Dunn testified that at the time the layoff was implemented, he had no knowledge of any union activity on the part of Ana Portuguez, and in fact had only heard the word union mentioned in connection with Teddi for the first time on April 12.

Wilson's testimony generally supported Dunn. According to Wilson, he made the decision to lay off employees in his department about 1 week prior to the effective date of April 12. He and Teresa Rosales then discussed the individuals who were to be laid off. Wilson denied knowing about Ana Portuguez' union activity, or anything about the union campaign, at the time the decision was made as to who should be laid off. Wilson testified that when Portuguez returned to Teddi after an earlier layoff, she was rehired specifically to sew labels on garments. (See R. Exh. 4.) At the time of the April 12 layoff, Portuguez was the only employee in the traffic department whose primary responsibility was sewing labels, although as the need arose, other employees were assigned to assist her for short periods of time. Wilson testified at length about the need to switch garment labels on clothing originally ordered by several large retail customers, including Montgomery Ward. When Ward went out of business, it was necessary to switch the labels from Ward's individual label to the Teddi label. This required the sewer, specifically Portuguez, to perform the work. According to Wilson, consideration had been given to laying off Portuguez at the time of an earlier layoff in December 2000. However, Wilson decided not to do so, because that was the time when it seemed that Ward might be going out of business, and the services of a sewer would be in demand. As time passed and clothing labels were changed to the Teddi label, there was less work for Portuguez to perform. According to Wilson, because the sewing work had diminished, Portuguez was given other work to perform, such as price ticketing or packing. He allegedly selected her for layoff, because the lack of label sewing made her expendable, especially when she was being used in the price ticketing area, where a significant number of employees were about to be laid off.

Ana Portuguez testified that she was informed at the time of her layoff that she was being let go because of a lack of work. She protested that there was still work to perform, and that she was a "permanent" employee. Apparently by this statement she meant a full-time employee, as opposed to a temporary employee. Portuguez testified that while most of her time at Teddi had been spent sewing, she also packed and priced. It is counsel for the General Counsel's contention that the Respondent did not have a legitimate business reason for laying off Portuguez, but was simply motivated by union animus.

IV. ANALYSIS AND CONCLUSIONS

A. The 8(a)(1) *Allegations*

Gloria Gomez was not a credible witness. Her testimony regarding the events of April 9 and 10 was inherently implausible. Additionally, she was untruthful about her knowledge of Santiago Coronel's union activity. Coronel placed the meeting Gomez had with employees on April 9, which meeting Gomez admitted calling. However, she placed the meeting on April 16. As I find Coronel a much more credible witness, I will accept his contention that the meeting was held on April 9. In any event, the complaint allegation is phrased as "On about April 9," which is certainly broad enough to encompass the entire period in question.

According to Gomez, she called the meeting because her boss, Stuart Weiser, asked her to find out why the employees were not happy, what their needs were, and what management could do to help. He asked her to do this because he had heard "some rumors" of union organizing. While Gomez admitted that the meeting with the employees lasted 5 or 10 minutes, she testified that the only matter she raised was her willingness to help employees, if they were unhappy and would come to her with their problems. She denied mentioning the Union and alleged that the topic only came up when the employees on their own began to point to one another, accusing their fellow employees of being union organizers. In my view, her version of these events is highly implausible. There was obviously much more discussed at a meeting that lasted 5 or 10 minutes than simply Gomez' offer to help employees with their problems. The Union was clearly discussed. It is ridiculous to think that the employees brought up the subject of the Union on their own, or that without any prompting from Gomez, they began to point to each other and accuse fellow employees of being union organizers. The meeting was called because Weiser had heard rumors of union organizing, and it is simply logical to assume that Gomez brought up the subject of the Union.

The version of events as testified to by Santiago Coronel is much more plausible. His credibility is enhanced by his willingness to testify at variance with his past and current supervisor. According to Coronel, Gomez told the employees that she knew they had signed cards, although she did not know who had given them the cards. She said that the person passing out the cards was lying to the employees just to get their money, that they were being brainwashed, and not to be fools, but to think, Gomez warned the employees that she could fire them all at that time, although she did not want to do so. She reminded the employees that she had told them many times that if they were not content, not comfortable with their job, that the door was open to look for another job. Coronel estimated that the meeting lasted between 15 and 20 minutes.

Having credited the version of events as testified to by Santiago Coronel, I conclude that on April 9 the Respondent, acting through its supervisor, Gloria Gomez, violated the Act by giving its employees the impression that their union activities were under surveillance, and by threatening them with discharge or other unspecified reprisals because of their union and protected concerted activities. Further, the Respondent violated the Act by Gomez' statement to the employees that if they were dissatisfied with their jobs, presumably because of their interest in the Union, they should look for work elsewhere.[4] Also, by her own testimony, Gomez acknowledged telling the employees that if they were unhappy, to come to her with their problems.

[4] See *Christie Electric Corp.*, 284 NLRB 740, 776 (1987).

This was clearly an implied promise of unspecified benefits, so as to dissuade their support for the Union and, as such, a violation of the Act.[5] I find all the above statements by Gomez, as alleged in paragraphs 6(a), (c), (d), (f), (g), and (h) of the complaint, to constitute violations of Section 8(a)(1) of the Act.

However, regarding the allegations in paragraphs 6(b) and (e) of the complaint, that on April 9 Gloria Gomez threatened employees with being reported to the Immigration and Naturalization Service, and with a reduction in their hours of work, I find no evidence to support these specific claims. Therefore, I shall recommend dismissal of these allegations of the complaint.

Santiago Coronel testified that on April 10, the day following the group meeting, he was called into Gloria Gomez' office where the two met alone.[6] She denied that any such meeting ever occurred. For the reasons stated above, I found Gomez' testimony incredible. As further evidence of the untruthful nature of her testimony, I would note that on direct examination she testified that at the time of the group meeting, which she placed on April 16, she was unaware of Coronel's union activity. However, on cross-examination, she was forced to admit that in her affidavit provided to the Board during the investigation of this matter, she stated that the first time she heard that Coronel was distributing union authorization cards was on April 11, when two employees so informed her. Therefore, at the time she met alone with Coronel in her office, she knew of his union activity. This supports Coronel's testimony as to the substance of that meeting.

According to Coronel, Gomez began the conversation by saying that she had asked several people to identify the person who was distributing cards, and she had been told that Coronel was the "leader" of the campaign. She asked him if he knew that he was harming his family, and mentioned his two children who worked at the facility. She said he was jeopardizing his brother who also worked at Teddi. Gomez informed him that the Employer knew that his family did not have "documents," which he understood to mean legal papers or being undocumented. She warned him that the Employer could fire everybody, his whole family. The undersigned has credited the testimony of Coronel. Considering the events surrounding the conversation, Coronel's testimony has "the ring" of authenticity. It is inherently plausible.

Having credited the version of events as testified to by Santiago Coronel, I conclude that on April 10, the Respondent, acting through its supervisor, Gloria Gomez, violated the Act by interrogating Coronel regarding his union activity, and by giving him the impression that the employees' union activity was under surveillance. Further, by mentioning that Coronel and his family members who worked at Teddi did not have "documents," Gomez was making a not very subtle threat of discharge and deportation because of Coronel's union activity.[7] I find all the above statements by Gomez, as alleged in paragraphs 6(l), (j), and (k) of the complaint, to constitute violations of Section 8(a)(1) of the Act.

The complaint alleged that lead person Maritza Ochoa was an agent of the Respondent within the meaning of Section 2(13) of the Act. The Respondent denied Ochoa's agency status. When examining agency status, the Board applies common law principles of agency. Agency may be established based on either actual or apparent authority to act on behalf of an employer. The Board has held that apparent authority exists when there has been some "manifestation" by the employer to employees that creates a reasonable basis for the employees to believe that the employer has authorized the alleged agent to perform the acts in question. *Hausner Hard-Chrome of KY, Inc.*, 326 NLRB 426, 428 (1998); *Southern Bag Corp.*, 315 NLRB 725 (1994); and *Great American Products*, 312 NLRB 962, 963 (1993). Agency status is established if it is determined that under the facts of a particular case, the person alleged to be an agent was placed in a position by the employer such that employees would reasonably believe that the person in question spoke for the employer. *Lemay Caring Center*, 280 NLRB 60, 66 (1986). Also see *Waterbed World*, 286 NLRB 425, 425–427 (1987). It is unnecessary to conclude that the agent's actions in question were either authorized or subsequently ratified by the employer. Ibid.

Maritza Ochoa was a lead person in the traffic department. As was previously noted, Larry Wilson and Teresa Rosales were the only acknowledged supervisors in the traffic department, where approximately 120 or 125 employees worked during April. Wilson admitted that both he and Rosales spent the majority of their time in the office area, not on the shop floor with the employees. According to Wilson, he relied on the seven lead persons, one for each section in the traffic department, to convey work instructions to the employees. As a lead person, Ochoa was expected to give the employees instruction regarding the priority in which the work should be performed. Wilson testified that he expected her to get the work out. Ochoa was a conduit between Wilson and the employees. If there were a problem with a machine, she would notify management. On occasion she would select employees to perform specific job tasks. If employees ran out of material, they could get more supplies from Ochoa. While Wilson made the decision as to which employees would work overtime, it was Ochoa who frequently informed the employees that they had been

[5] The Respondent presented no evidence that it had a past practice of holding employee meetings where employee complaints were discussed with management in an effort to resolve those problems. The Board has held that in the absence of a past practice, solicitation of grievances or complaints during a union organizing campaign along with a promise to remedy those complaints constitutes a violation of the Act. *Capital EMI*, 311 NLRB 997, 1007 (1993), and *Low Kit Mining Co.*, 309 NLRB 501, 507 (1992).

[6] As is noted above, the Respondent contended that the group meeting took place approximately 1 week later. However, whether the meeting the following day between Gomez and Coronel took place on April 10 or 17, is of little import, as the complaint allegation is phrased as "On about April 10," which is certainly broad enough to encompass the entire period in question.

[7] When she mentioned that Coronel and his family were without "documents," Gomez was impliedly threatening Coronel with immigration action. It is a violation of Sec. 8(a)(1) of the Act to threaten to report employees to the Immigration and Naturalization Service because they engaged in union activity. See *Impressive Textiles*, 317 NLRB 8, 13 (1995), and *CKE Enterprises*, 285 NLRB 975, 989 (1987).

selected. Typically, Wilson selected one of the leads, primarily Ochoa, to translate for him when addressing a Spanish-speaking employee, which was the primary language for most of the employees. Wilson would meet daily with each individual lead, including Ochoa, to discuss the work that he expected the lead's respective section to get done that day.

I conclude that Maritza Ochoa is an agent of the Respondent within the meaning of Section 2(13) of the Act. As far as the employees in the traffic department were concerned, she spoke for management. Ana Portuguez testified that Ochoa would sometimes assign employees specific work to perform, notify them that they had been assigned overtime, and assist them if they had problems with material. This testimony conforms to that of Larry Wilson. Ochoa also testified that when she was first hired by the Respondent, she was interviewed for the job by Ochoa and turned in her job application to Ochoa. It is clear that employees were accustomed to dealing with Ochoa as a conduit of management. She represented management in her dealings with employees on a daily basis. Ochoa's apparent authority came from management's frequent use of her to communicate their wants and desires to the employees. Ochoa's conduct was such that the employees would reasonably believe that she spoke for the Employer. It was the Employer that created the situation by using Ochoa in such a fashion as would reasonably cause employees to believe that her comments and actions were sanctioned by management. Accordingly, she functioned as an agent under existing Board law.

Ana Portuguez testified that during the month of March, Ochoa approached her and a group of fellow employees, and informed them that some employee had been distributing union cards. Allegedly, she told them that they should not do so, but rather should protect their jobs, otherwise they would be fired. It is alleged in the complaint that this conversation took place on March 26. Further, Portuguez testified that on April 12, the day she was laid off, she was alone at her sewing machine when Ochoa approached and asked if she knew who was passing out union cards. Portuguez claimed that Ochoa told her that the Employer was going to investigate to determine who was distributing cards. They had a discussion about why Ochoa was not in favor of the Union, after which Portuguez told Ochoa that she had been given a union card by a male coworker. However, Ochoa denied that either of these conversations ever took place. Ochoa testified that she had never had a conversation with Portuguez where the subject of the Union or Portuguez' union activity was ever discussed.

I found Ana Portuguez to be generally credible. Considering the circumstances surrounding the events in dispute in this case, her testimony was for the most part inherently plausible. However, I do not credit her testimony that in March she was with a group of employees when approached by Ochoa who allegedly threatened the employees with discharge if they supported the Union. As was mentioned above, on cross-examination, Portuguez acknowledged that there was no mention of any such conversation in the affidavit, which she had given to the Board agent during the investigation of this matter. While she insisted that she had told the agent about this incident, I find it highly unlikely that had she mentioned the incident, that the agent would have neglected to include it in the affidavit. Rather, I am of the view that when she testified, Portuguez was either confused about dates, or was confusing this incident with a later conversation which she had with Ochoa. In light of Ochoa's denial, I must conclude that there is insufficient evidence to support this complaint allegation. However, after observing Portuguez' demeanor while testifying, I am of the view that any misrepresentations on her part regarding this incident were unintentional, likely the result of the effects of the passage on time on her memory. In any event, I shall recommend the dismissal of paragraph 7(a) of the complaint.

Regarding the alleged conversation of April 12, I am of the opinion that it occurred in substance as testified to by Portuguez. I find her testimony regarding this conversation inherently plausible. I do not credit Ochoa's denial that any such conversation ever occurred. Portuguez appeared to be a sincere individual, who testified in a quiet and reserved manner. Ochoa, on the other hand, testified with general denials that left the undersigned wondering what matters she had simply decided not to talk about. As noted above, I concluded that Ochoa was a conduit for the Employer and, as such, its agent. The Board has held that an employer may have an employee's statements attributed to the employer, if the employee is held out as a conduit of information, instruction, or authority from the employer. *Debber Electric*, 313 NLRB 1094, 1095 fn. 6 (1994). That was precisely how Ochoa functioned in the traffic department. Having found that Ochoa was an agent of the Respondent acting within her apparent authority, I conclude that on April 12, the Respondent, through Ochoa, interrogated Portuguez regarding her union activity. Accordingly, I find that the statements by Ochoa as alleged in paragraph 7(b) of the complaint violated Section 8(a)(1) of the Act.

Higinio Coronel was alleged in the complaint as an agent of the Respondent, who on April 14 threatened an employee with discharge for supporting the Union. As noted above, there was insufficient evidence offered to establish agency status on the part of Higinio Coronel. Further, there was absolutely no evidence offered by counsel for the General Counsel to establish that the alleged threatening statement was ever made. Accordingly, I shall recommend dismissal of paragraph 8 of the complaint.

B. The 8(a)(3) *Allegations*

On April 12 the Respondent laid off 15 employees in the traffic department, Ana Portuguez being one of those employees. It was the General Counsel's contention that Portuguez was selected for layoff because of her union activity. The Respondent denied that contention, and alleged that the layoff of Portuguez was part of a reduction-in-force necessitated by economic factors.

It is clear that the issue before the undersigned centers around the question of the Respondent's motivation in laying off Portuguez. In *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board announced the following causation test in all cases alleging violations of Section 8(a)(3) or (1) turning on employer motivation. First, the General Counsel must make a prima facie showing sufficient to support the inference that protected conduct was a "motivating factor" in the employer's

decision. This showing must be by a preponderance of the evidence. Then, upon such a showing, the burden shifts to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct. The Board's *Wright Line* test was approved by the United States Supreme Court in *NLRB v. Transportation Corp.*, 462 U.S. 393 (1983).

In the present case, I conclude that the General Counsel has made a prima facie showing that Ana Portuguez' protected conduct was a motivating factor in the Respondent's decision to include her in a layoff of employees in the traffic department. In *Farmer Bros. Co.*, 303 NLRB 638, 649 (1991), enfd. 988 F.2d 120 (9th Cir. 1993), the Board held that in order to establish a prima facie case, the General Counsel must show: (1) that the discriminatee engaged in protected activities; (2) that the employer had knowledge of such activities; (3) that the employer's actions were motivated by union animus; and (4) that the employer's conduct had the effect of encouraging or discouraging membership in a labor organization.

As has been noted above, Portuguez' union activity consisted of distributing approximately six union authorization cards to fellow employees. She had initially received these cards from Santiago Coronel, and was one of only four employees who assisted him in passing out cards. In addition to distributing union cards, Portuguez also spoke to fellow employees at break time in an effort to get them to support the Union. However, the Respondent's witnesses denied any knowledge of Portuguez' union activity at the time the decision was made to lay her off. Larry Wilson testified that he made the decision to have a layoff in the traffic department about 1 week prior to April 12, and in consultation with Teresa Rosales decided who to include in that layoff. Rosales placed the decision as to who should be laid off as having been made the day before the actual layoff. Both Wilson and Rosales claimed that at the time they decided who should be laid off, they had no knowledge of any union activity at Teddi, or any knowledge of any union activity on the part of Portuguez.

I do not find the denials of any knowledge of Portuguez' union activity by the Respondent's witnesses to be credible. As noted above, I found that on April 12, the day of the layoff, lead person Maritza Ochoa interrogated Portuguez about her union activity. They discussed who was passing out union cards, and Ochoa wanted to know specifically who had given Portuguez a card. Additionally, Ochoa admitted being told something on April 12 by employee Saide Vazquez about having to sign a card, and then going to retrieve that card for Larry Wilson and Dennis Dunn. I find Ochoa's testimony that she did not read the card or notice that it was a union card to be totally implausible. However, I do find plausible Portuguez' testimony that on April 12, after their earlier conversation, she observed Ochoa removing a union card from Isabell Sotelo's workstation, which was right next to Portuguez' station. Portuguez had given this card to Sotelo some days earlier. In any event, it is clear that by at least sometime on April 12, if not a good deal earlier, Ochoa had become aware that Portuguez was involved in the union organizing campaign. Ochoa was a lead person and, I have also concluded, an agent of the Respondent. It would be naive to assume that her knowledge of Portuguez' union activity would not have been immediately communicated to Ochoa's boss, Larry Wilson.

Portuguez was not informed that she was being laid off until approximately 4:25 p.m. on April 12, sometime after Ochoa became aware of Portuguez' union activity. It is certainly logical to assume that by that time, Ochoa had already informed Wilson of that activity. While a decision to layoff employees in the traffic department may have been made 1 week earlier, I do not credit the testimony of Wilson and Rosales that a decision as to which specific employees to lay off had been made at least a day prior to the date of implementation. Even assuming a decision had already been made to lay off 14 specific temporary employees, I do not believe that Portuguez, the only full-time employee laid off, was added to that list until after Wilson learned of her union activity. The timing is too suspect to believe otherwise, with Portuguez' layoff coming the same day she was interrogated about her union activity by Ochoa.[8]

Regarding the question of whether the Respondent's actions were motivated by union animus, it was clear from the conduct of Gloria Gomez on April 9 and 10 that the Respondent was highly distressed to learn that a union organizing campaign was underway. The undersigned has already concluded that the Respondent engaged in unlawful conduct through Gomez' actions in threatening employees with discharge and other reprisals because of their union activity. This unlawful conduct included interrogation, the impression of surveillance, and promise of benefits, all to dissuade employees from supporting the Union. Gomez acknowledged that she was instructed by Chief Executive Officer Stuart Weiser to talk to the employees and find out why they were unhappy, as he had heard some "rumors" of union organizing. In my view, the Respondent's animus towards the Union was clearly manifested by the conduct of Gomez in the 2 or 3 days prior to the layoff.

It is obvious that the Respondent's conduct in laying off Portuguez on April 12, the only full-time employee so treated, would have had the effect of discouraging membership in the Union. Portuguez had been active in the organizing campaign by distributing union cards and talking in favor of the Union with fellow employees. Her layoff would have served as a warning to the other employees that the result of supporting the Union was to be laid off. Unquestionably, this action would have had a chilling effect on the employees' exercise of Section 7 rights.

The General Counsel, having met its burden of establishing that the Respondent's actions were motivated, at least in part, by antiunion considerations, the burden now shifts to the Respondent to show that it would have taken the same action absent the protected conduct. *Senior Citizens Coordinating Council of Riverbay Community*, 330 NLRB 1100 (2000); and

[8] The Respondent never offered a written "list" or any other documentation to support the testimony of its managers that a decision was made at least a day before the reduction-in-force, as to which specific employees were to be laid off. It is logical to assume that such a list would exist, and that the Respondent would have produced it had it included the name of Ana Portuguez. The fact that no such "list" was produced would certainly at least suggest that any such list, if it existed, would not contain the name of Portuguez, as she was included in the layoff only after the Respondent learned of her union activity.

Regal Recycling, Inc., 329 NLRB 355 (1999). The Respondent must persuade by a preponderance of the evidence. *Peter Vitalie Co.*, 310 NLRB 865, 871 (1993). The Respondent has failed to meet this burden.

The Respondent takes the position that it was motivated by legitimate business considerations in laying off Ana Portuguez. As has been noted, she was one of 15 employees laid off from the traffic department on April 12. Dennis Dunn testified that as a result of economic factors, the traffic department had been reduced from approximately 125 to 140 employees in April, to approximately 80 to 90 employees at the time of the hearing. Although Portuguez was the only full-time employee to be laid off from the traffic department in April, it was Dunn's position that neither seniority nor distinctions between temporary and full-time employees were factors considered for layoff purposes. Larry Wilson testified that Portuguez was specifically selected for layoff because her primary duty was sewing labels, and the need for that work had significantly declined following the failure of Montgomery Ward.

There is no dispute that because of economic conditions the Respondent had a reduction-in-force in the traffic department in April. However, in the my view Portuguez would not have been part of that layoff were it not for her union activity. It is very significant that, with the exception of Portuguez, all the laid off employees were classified as temporary. In my opinion, the Respondent's witnesses have failed to give a credible explanation for the decision to include Portuguez, a full-time employee, in the layoff. While Portuguez was primarily a label sewer, she was also used as a packer and price installer. Rather than lay off a full-time employee, it would seem to make more sense to simply have Portuguez work primarily as a packer and price installer, and only occasionally, as the need required, as a label sewer. In reality there is a difference between a temporary employee, who is hired without benefits, and a full-time employee, who receives company benefits. There is a clear expectation that the full-time employee's tenure with the Employer is more permanent than others who are classified as temporary. This is especially true where the employee in question is working at a satisfactory level. Teresa Rosales, a supervisor in the traffic department, testified that she never had to discipline or warn Portuguez for poor work performance. Under those circumstances, Larry Wilson's testimony as to why he selected Portuguez for layoff is simply not credible.

Also, timing strongly suggests that business considerations did not cause Portuguez' layoff. She was laid off on the very day that Maritza Ochoa, who I have concluded was an agent of the Respondent, interrogated her about her union activity, and after Ochoa obtained a union card which she presented to Wilson and Dunn. While Wilson and Rosales testified that the decision as to who should be laid off had been decided prior to April 12, the Respondent offered no documentation to support that contention. Assuming for argument sake that their testimony was accurate, surely a document must have existed listing the names of the employees selected for layoff by at least April 11, the day before the layoff was to be implemented. I find the Respondent's failure to offer any such document highly suspicious. I draw an adverse inference from the Respondent's failure to offer any such document, and conclude that if such a document existed, it likely did not contain the name of Ana Portuguez. In my opinion, Portuguez' name did not appear on any layoff list, written or oral, until April 12, after the Respondent learned of her union activity.

I find that the Respondent has failed to establish by anything approaching a preponderance of the evidence that Portuguez was laid off on April 12 because of economic considerations. The General Counsel's prima facie case has not been rebutted, as the reasons advanced by the Respondent are pretextual. It is, therefore, appropriate to infer that the Respondent's true motive was unlawful, that being because of union activity. *Williams Contracting, Inc.*, 309 NLRB 433 (1992); *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd 705 F.2d (6th Cir. 1982); *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466 (9th Cir. 1966). Accordingly, I find that the Respondent has violated Section 8(a)(1) and (3) of the Act by laying off Ana Portuguez on April 12, as alleged in paragraph 9(a) of the complaint.

CONCLUSIONS OF LAW

1. The Respondent, Teddi of California, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, United Industrial Workers Local 24, is a labor organization within the meaning of Section 2(5) of the Act.[9]

3. By the following acts and conduct, the Respondent has violated Section 8(a)(1) of the Act

(a) Interrogating employees concerning their own or others' union activities, membership, or sympathies.

(b) Impliedly promising employees unspecified benefits so as to dissuade their support for the Union.

(c) Creating the impression among its employees that their union activities are under surveillance.

(d) Threatening employees with discharge, deportation, or with other adverse action in order to discourage them from supporting the Union.

4. By the following acts and conduct, the Respondent has violated Section 8(a)(3) and (1) of the Act

(a) Laying off employee Ana Portuguez.

5. The above unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

6. The Respondent has not committed the other violations of law that are alleged in paragraphs 6(b) and (e), 7(a), and 8 of the complaint.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily laid off its employee Ana Portuguez, my recommended Order requires the Respondent to offer her immediate reinstatement to her former

[9] The Respondent denied the labor organization status of the Union. For the reasons set forth above, I found the Union to be a labor organization within the meaning of the Act. However, even assuming, for the sake of argument, that the Union is not a labor organization, the employees involved in these proceedings were certainly engaged, at a minimum, in protected concerted activities.

position, displacing if necessary any replacement, or if her position no longer exists, to a substantially equivalent position, without loss of seniority and other privileges. My recommended Order further requires the Respondent to make Portuguez whole for any loss of earnings and other benefits, computed on a quarterly basis from the date of her layoff to the date the Respondent makes a proper offer of reinstatement to her, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

The recommended Order further requires the Respondent to expunge from its records any reference to the layoff of Portuguez, and to provide her with written notice of such expunction, and inform her that the unlawful conduct will not be used as a basis for further personnel actions against her. *Sterling Sugars, Inc.*, 261 NLRB 472 (1982). Finally, the Respondent shall be required to post a notice that assures the employees that it will respect their rights under the Act.

As part of the requested remedy, counsel for the General Counsel seeks to have the notice read to an assembly of the Respondent's employees. The Respondent opposes this "extraordinary" remedy. While such unusual remedies have been utilized in certain cases,[10] in the vast majority of cases, the Board has not found it necessary to require a reading of the notice in order to remedy a violation of the Act. In the view of the undersigned, the Respondent's unlawful conduct was not so egregious as to require the requested extraordinary remedy. The Respondent's unfair labor practices, although certainly very serious, can be remedied, and the employees' Section 7 rights protected, by means of the standard Board remedy. As I believe the purposes of the Act can be effectuated by means of the standard remedy, I decline to recommend the requested remedy of reading the notice to an assembly of the Respondent's employees.

[Recommended Order omitted from publication.]

[10] See *United States Services Industries*, 319 NLRB 231 (1995).